HONOURABLE SRI JUSTICE R. SUBHASH REDDY

WRIT PETITION No. 25581 OF 2005

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ORDER:

The petitioner, who is working as technician in the Water Management Department of Visakhapatnam Steel Plant, has filed this writ petition questioning initiation of disciplinary proceedings pursuant to the charge sheet dated 09-08-2005, pending finalization of prosecution in Crime No. 20(A) of 2003 on the file of the Central Bureau of Investigation, Visakhapatnam.

A case in crime No.20(A) of 2003 was registered on the file of the Central Bureau of Investigation, Visakhapatnam, against the petitioner and six others, for the alleged offence under Sections 120-B, 420, 477-A IPC, and Section 13(2) read with Section 12(1)(d) of Prevention of corruption Act, 1988. In the above said criminal case, the petitioner is the second accused. The above case is registered on the allegation, that A1 to A7 had entered into criminal conspiracy and pilfered many truck loads of coke during the months from January to July, 2003, worth about Rs.25,00,000/-. On the complaint of the management of the respondent-company, case is registered against A1 to A7 and investigation is in progress. During the pendency of the said criminal case, departmental proceedings are also initiated for taking disciplinary action against the petitioner. The petitioner was placed under suspension, as per the certified Standing Orders of the respondent-Company, and, was charge sheeted for having committed acts of misconduct. The petitioner has submitted his explanation to the charges leveled against him. Dissatisfied with the explanation of the petitioner, enquiry officer was appointed, who has already commenced enquiry and examined one witness. At this stage, this Writ Petition is filed.

The only ground on which this Writ Petition is filed, that the departmental

proceedings are initiated on the very same allegations, on which criminal proceedings are already initiated and investigation is pending in Crime No.20(A) of 2003 on the file of the Central Bureau of Investigation, Visakhapatnam; in that view of the matter, parallelly, it is not open for the respondent-company to proceed with the enquiry departmentally. It is submitted by the learned Counsel, that if the enquiry is allowed to be proceeded in departmental proceedings, his case will be prejudiced in the criminal proceedings. Reliance is placed by the learned Counsel for the petitioner, on the judgments of the Supreme Court in the cases of *P.J.Sunderrajan Vs. Unit Trust of India*, and, *Kusheshwar Dubey Vs. Bharat cokingCoal Limited*.

On the other hand, counter affidavit is filed by the Chief Manager (Technical) of the respondent-organization. In the counter affidavit, it is stated, that in the absence of complicated questions of fact and law, as a matter of course, the petitioner is not entitle to seek stay of disciplinary proceedings. Further, it is stated, that even on earlier occasion, disciplinary proceedings were initiated against the petitioner for the misconduct of unauthorized absence for 154 days, and, even this time also, serious charges are framed against the petitioner in the disciplinary proceedings. It is stated, the petitioner had connived with the private contractors and got loaded private trucks with metallurgical coke, at the coke yard of Visakhapatnam Steel Plant, and facilitated to pilfer coke to Blast Furnace Slag, knowing very well that it is costly raw material and important for the plant. The learned Counsel appearing for the respondent-company also placed reliance on the judgments of the Apex Court in the cases of *Kendriya Vidyalaya Sangathan Vs. T.Srinivas,* and, *State bank of India Vs. R.B.Sharma.*

It is contended by the learned Counsel for the petitioner, that the charges levelled against the petitioner in the criminal proceedings as well as departmental proceedings are based on the similar set of facts; in that view of the matter, if the departmental proceedings are allowed to go on, his case will be prejudiced in the criminal proceedings. On the other hand, Sri V.Ravinderrao, learned Standing Counsel appearing for the respondent-Company submitted, that in the disciplinary proceedings, the petitioner has already submitted his explanation, and, enquiry is already commenced, and, in view of serious charges framed against the petitioner, it is not a case to stay the departmental proceedings. From the latest judgments of the Supreme Court, it is clear that desirability or propriety of continuance of

departmental proceedings is to be determined taking into account facts and circumstances of each case. Though criminal case is registered against the petitioner on the file of the Central Bureau of Investigation, Visakhapatnam, but it is stated, that trial is not yet commenced and investigation is only going on. Further, it is submitted, that so far as departmental proceedings are concerned, the petitioner has already submitted his explanation, and, dissatisfied with his explanation, enquiry officer is appointed, who has already commenced enquiry and examined one witness. Looking at the nature of charges, and, serious acts of misconduct alleged against the petitioner, it is the case of the respondent-company, that the petitioner has colluded with the private contractors and got loaded valuable raw material belonging to the respondent-company, which resulted in heavy loss to the organization. Taking into gravity of the charges, and also the fact that the petitioner has already submitted explanation in the departmental proceedings, in which, enquiry is already commenced, I am of the view that it is not a fit case to stall the departmental proceedings, merely on the ground that similar such charges are also being investigated by the criminal investigating agency in Crime No.20(A) of 2003. The approach and objective in the criminal proceedings and disciplinary proceedings is altogether distinct and different. So far as the disciplinary proceedings are concerned, scope of enquiry is confined to, whether the employee is guilty of misconduct for taking disciplinary action as per the Standing Orders of the company, whereas, in the criminal proceedings, if the charges levelled against the accused are established, further question arises as to, what sentence or penalty is to be imposed. In that view of the matter, having regard to the different natures of enquiries, and, taking into gravity of the charges and the stage of disciplinary proceedings, it is not a fit case to stall the departmental proceedings as pleaded by the petitioner.

For the foregoing reasons, the Writ petition is devoid of merits and the same is accordingly dismissed. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATED:16-3-2006

Msnr